

**THE COURT OF FINANCIAL COMMISSIONER REVENUE
(COMMISSIONER AGRARIAN REFORMS)
JAMMU AND KASHMIR AT JAMMU**

FILE NO.
359/FC-AP

DATE OF INSTITUTION
23.02.2015

DATE OF DECISION
28.05.2015

1) HIMAT SINGH S/O NARINDER SINGH R/O VIJAY BHAVAN, KACHI
CHAWNI, JAMMU. **(PETITIONER)**

VERSUS

1) KULDEEP SINGH S/O SHANKER DEV SINGH JAMWAL R/O GANDHI
NAGAR, JAMMU. **(RESPONDENT)**

In the matter of:

**Reference dated 11.02.2015 made by the court of the
Additional Commissioner (with powers of Divisional
Commissioner) Jammu in revision petition against the
order dated 23.03.2010 passed by the Deputy
Commissioner (Collector), Reasi whereby appeal filed
against mutation No. 1212 dated 16.02.2000 of village
Kundarorian, Reasi has been dismissed.**

For Petitioner --- Adv. Rajnesh Oswal, Adv. Rohit Sharma
For Respondent --- Nemo (Adv. Neeraj Mengi before the court below)

J U D G E M E N T

1) Concisely, the facts of the case are that the petitioner and the respondent had purchased land measuring 16 Kanals falling under Khasra No. 213 min. in village Kundarorian, Tehsil and District Reasi in equal shares from one Joginder Singh S/o Shanker Dass of the same village. The sale deed in this behalf was duly registered in the court of Sub-Registrar, Reasi on

14.12.1992. Later, a dispute arose between the vendees and the co-sharers of the vendor. One Gulabu adopted son of Raseela and Mohan Singh adopted son of Bhagu challenged the sale deeds in the court of Sub-Judge, Reasi. But before the said court could decide the case on merits, the parties entered into a compromise and the civil court passed a decree dated 14.01.1998 ordering that the respondent will relinquish his share of 08 Kanals in favour of the ex owners and the petitioner was to give 01 Kanal out of his share in the same way. Incorporating the said decree in the revenue records, the Tehsildar, Reasi attested the impugned mutation No. 1212 dated 16.02.2000 by virtue of which the remaining 07 Kanals of land was apportioned to both the petitioner and the respondent herein equally.

2) Aggrieved, the petitioner herein moved the Deputy Commissioner (Collector), Reasi challenging the impugned mutation in appeal. Questioning the validity of relinquishment of land by the respondent, the Collector observed as to why his whole share was restored to the ex owners. Moreover, the respondent had also given in writing that the impugned mutation was wrongly attested and prayed for the acceptance of the appeal to attest a fresh mutation in favour of the petitioner herein only. The said court held that there is “something wrong at the bottom” and therefore, dismissed the appeal.

3) Dissatisfied, the petitioner herein filed a revision petition challenging the order passed by the Deputy Commissioner (Collector), Reasi along with the impugned mutation No. 1212 before the Divisional Commissioner, Jammu who transferred the same to the Additional Commissioner (with powers of the Divisional Commissioner), Jammu for disposal under law. The court below while examining the relevant record observed that the Tehsildar concerned was simply supposed to carry out the decree of the civil court in letter and in spirit and was not authorised to draw any other inference while attesting the impugned mutation. Since the decree had been misinterpreted, the order passed by the Tehsildar can't be said to be correct and logical. Even the Deputy Commissioner (Collector), Reasi has not appreciated the matter in its real perspective and his order also does not stand the test of law. Placing reliance on these facts and circumstances,

the court below felt that the impugned mutation is liable to be set aside. It has accordingly submitted the case to this court under Sec. 15 (3) of the Land Revenue Act, 1996 (Smvt) with the recommendation to set aside the impugned mutation and to remand the case back to the Tehsildar concerned for implementing the decree of the civil court in letter and in spirit. The parties were further directed to appear before this court on 02.03.2015.

- 4) A critical analysis of the records tagged on with the case file indicates that the Deputy Commissioner (Collector), Reasi in exercise of the appellate powers totally went off the tangent and sneaked into the territorial jurisdiction of the civil court. It was not the job of the Collector to see as to how the respondent herein had relinquished his share in favour of the ex owners. It was just a compromise before a civil court which was duly communicated in the form of an order.
- 5) As for the order passed by the court below is concerned, it has also not gone into the actual merits of the case. The kind of land under consideration is undoubtedly "**Arak**" which has a special significance in the state of Jammu and Kashmir. **Sec. 20-B of the Big Landed Estates Abolition Act, 2007 (Smvt.) expressly prohibits the transfer of such lands or any interest therein** barring even any registration of documents in this behalf. This court regrets that initially when the revenue extracts were issued by the subordinate revenue agency, no one bothered to see the kind of land. Even when the matter reached the Deputy Commissioner, Reasi and the court below, this issue has been overlooked. No such mutation can be attested with regard to these lands even if a decree of the civil court orders that.
- 6) In addition, the proviso to Sec. 13 of the Agrarian Reforms Act, 1976 lays down that the **land recorded as Orchard, Arak, Kap, Kah Krisham or of a class notified under clause (f) of Sec. 3 shall not be put to any use other than such Orchard, Arak, Kap, Kah Krisham or for growing fuel and fodder, as the case may be, subject to sub-section (1) of Sec. 15 in the case of an orchard.** It is also required to be seen as to whether the usage of this land is same or it has been put to some other use.

- 7) Further, Sec. 17 (1) (h) of the Jammu and Kashmir Registration Act, 1977 (1920 AD) provides for the compulsory registration of non testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, decree, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property. This implies that if a court passes a decree of adverse possession in favour of any person, the same is liable to be registered first and then incorporated in the revenue record by way of attestation of a mutation. This procedure, which is duly established by law, has been transgressed with the attestation of the mutation No. 1212 which has in the process caused a loss to the exchequer of the state.
- 8) For the reasons aforesaid and after a careful reflection over the matter, the reference made by the court below is **NOT** accepted. The order dated 23.03.2010 passed by the Deputy Commissioner (Collector), Reasi along with the order dated 16.02.2000 passed on mutation No. 1212 is set aside. The case is remanded to the Deputy Commissioner, Reasi for a **de novo** enquiry into the matter, more specifically with reference to the observations made by this court and for taking further appropriate necessary action. If not competent to take action, the Deputy Commissioner concerned shall direct the subordinate revenue officers along with specific instructions to act under law. No costs. Interim directions, if any, shall stand vacated. The case file be relegated to records after due completion.

Sd/-
(Dr. Arun Kumar) IAS
Financial Commissioner Revenue
(Commissioner Agrarian Reforms)
Jammu and Kashmir, Jammu

Announced today on this the **28th day of May, 2015** under my hand and Seal of this Court.